

AMENDATORY SECTION (Amending WSR 90-20-109, filed 10/2/90, effective 11/2/90)

WAC 173-170-010 Purpose and authority. The purpose of this chapter is to establish requirements for the grant and loan program covering rehabilitation, improvement, and construction of agricultural water supply facilities pursuant to Referendum 38, chapter 43.99E RCW. The department shall provide grants and loans to applicants for water supply facilities for agricultural use alone or in combination with fishery, recreational, or other beneficial uses of water. In this regard, an objective of providing state assistance to public bodies engaged in irrigation shall be to assist those entities in improving their efficiency of water use beyond current levels.

Note: All statutes, rules, or regulations cited in this chapter are available for review at Department of Ecology, ((Mailstop PV-11, Olympia, WA 98504-8711)) P.O. Box 47600 Olympia, WA 98504-7600.

AMENDATORY SECTION (Amending WSR 90-20-109, filed 10/2/90, effective 11/2/90)

WAC 173-170-020 Definitions. (1) "Department" means the Washington state department of ecology.

(2) "Agreement" means a binding legal document containing all applicable terms and conditions pertaining to loans and/or grants entered into under Referendum 38 which is signed by the program manager for the department's water resources program and by the duly authorized official of the applicant.

(3) "Agricultural water supply facility" means a water supply and distribution system used for agricultural purposes and owned or operated by a public body, including but not limited to all equipment, utilities, structures, real property, and interests in and improvements on real property necessary for or incidental to the acquisition, construction, installation, or use of any such water supply or distribution system.

(4) "Applicant" means the public body making a request for financial assistance under Referendum 38.

(5) "Class A project" means a construction element associated with an agricultural water supply facility which:

(a) Results in improved water use efficiency and/or quantitative water savings as determined by the department; and

(b) Is one or more of the following: (i) Canal and lateral linings; (ii) piped conveyance and distribution system; (iii) consolidation and/or realignment of delivery systems; (iv) flow measuring devices, e.g., flow control devices; (v) entire structures/regulating structures (which are new or replace obsolete ones) including: (A) Checks, (B) checkdrops, (C) siphons, (D) turnouts, (E) flumes, (F) reregulation reservoirs; (vi) multiple use water storage dams and reservoirs; (vii) automation with central control of regulating structures including on-off control of pumping plants in canals and laterals; (viii) new booster pumps for pressurized systems; (ix) project pumping plants;

(c) In the event there are technological advances that increase water use efficiency and/or result in significant water savings that are not described in (a) of this subsection, such project element(s) will be evaluated as a Class A project by the department.

(6) "Class B project" means a construction element associated with an agricultural water supply facility which:

(a) Does not contribute to quantitative water savings as determined by the department; and

(b) Is one or more of the following: (i) In-line water withdrawal pumping plant; (ii) well drilling, well pumps; (iii) diversion dams; (iv) replacement, rehabilitation, or improvement of in-line booster pump(s); (v) rehabilitation or improvement of storage dam(s) or part(s) thereof.

(7) "Emergency project" means a capital improvement construction element to repair, due to natural causes (except drought), water supply, diversion or conveyance facilities, which is necessary to prevent unsafe conditions or ensure the continued delivery or conveyance of water in the agricultural water supply system.

(8) "Financial assistance" means grants and loans as authorized by chapter 43.99E RCW, Referendum 38.

(9) "Fisheries facility" means a construction element associated with an agricultural water supply facility which:

(a) Is identified as an integral element of a project for the construction, rehabilitation, and/or improvement of an agricultural water supply facility; and

(b) Will provide recognized benefits to the anadromous and/or resident fish species of the state.

(10) "Implementation phase" means the acquisition, design, construction, and improvement of agricultural water supply facilities within an irrigation district or a specific area or drainage basin for storing, diverting, transporting, or distributing water to land for irrigation and for protecting and enhancing fisheries, recreational, or other beneficial uses that may be associated with such facilities.

(11) "Local clearinghouse" means the county or regional

comprehensive planning agency designated to serve as a coordinating office for certain local areas. A list of clearinghouses is available from the department. The local clearinghouses review proposed projects for conformance to regional plans, ask for comments from other agencies, and relay these remarks back to the applicant. This process helps assure that policies and comprehensive plans of cities, counties, or regions will be followed.

(12) "Payment schedule" means the due dates for loan payments and any interest thereon, as included in the loan agreement.

(13) "Planning phase" means the preparation of a comprehensive water conservation plan which conforms with WAC 173-170-060, which covers the applicant's entire jurisdiction and service area.

(14) "Plans and specifications" means engineering information and calculations to support the project and construction drawings with necessary engineering detail of the project and complete material specifications and standards to support the drawings and project. These will be prepared in sufficient detail and, upon approval by the department, become part of the bid documents which allow contractors to bid on and construct agricultural water supply facilities or attendant fisheries facilities or recreational facilities or a portion thereof.

(15) "Public body" means the state of Washington or any agency, political subdivision, taxing district, or municipal or public corporation thereof; an agency of the federal government; and those Indian tribes which may constitutionally receive grants or loans from the state of Washington.

(16) "Recreational facility" means a water and/or water-associated system which:

(a) Is identified as an integral element of an agricultural water supply facility; and

(b) Will provide recognized benefits for human use and recreation through fishing, boating, water skiing, swimming, rafting, picnicking, and/or camping.

(17) "Referendum 38" means the grant and loan financial assistance program and its procedures, which pertain to agricultural water supply facilities alone or in combination with fishery, recreational, or other beneficial uses of water, as authorized in chapter 43.99E RCW.

(18) "Request for financial assistance" means the formal application packet, as described in WAC 173-170-030 and 173-170-060, submitted to the department requesting grant and/or loan funds to accomplish an eligible project.

(19) (~~"Small parcels" means those lands which:~~

~~(a) Have been platted or subdivided prior to the enactment of the 1985 amendment to RCW 58.17.310; and~~

~~(b) Are entitled to receive irrigation water for noncommercial use; and~~

~~(c) Lie wholly within an irrigation district established under state laws prior to July 28, 1985.~~

~~(20))~~ "Water use efficiency elements" means those implementation projects or portions thereof which result in reduced operational and conveyance losses and improved delivery of requisite amounts of water to farms within the limits of the pertinent water right permit or certificate.

(20) "Yakima River Basin Water Enhancement Project" (YRBWEP) is a federal, tribal, state and local cooperative program for improving water supply, habitat and stream flow conditions in the Yakima River Basin of Washington. The project was originally authorized by Congress in 1979 with subsequent implementing legislation being passed in 1984 for fish passage improvements and in 1994 for water conservation and related elements.

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WAC 173-170-040 Comprehensive water conservation plan--Contents--Funding. The comprehensive water conservation plan, which is the ultimate work product due at the end of the planning phase, will address and provide information on the following topics for the geographical area indicated in the request for financial assistance:

Applicant Organization

(1) Applicant's statutory authority; history of organization management; assessment authority; and operation procedures and management policies.

Land Base and Land Use

(2) Layout map showing:

(a) Boundaries of the applicant's jurisdiction and service area;

(b) Location of: (i) The lands which are assessed by the applicant, and (ii) those lands to which water is delivered in accordance with the water rights or water right claims or otherwise;

(c) Land use information including total acres irrigated over a representative historical period and cropping patterns for each year of a recent five-year period.

Water Supply, Use, and Rights

(3) Layout map showing location of: (a) Natural features (streams, rivers, lakes, ground water aquifers) including those in the watershed(s) where the water supply originates; and (b) all of the applicant's existing water supply facilities inside and out of its service area.

(4) Information on the applicant's and/or pertinent individual's water rights and/or water right claims for irrigation water supply, including ongoing or future water rights or water rights claims, conflicts, and litigation.

(5) Hydrologic water supply data including historical records of surface water availability (natural flows and storage), and ground water pumpages and other pertinent aquifer data on availability for withdrawal for water supply purposes.

(6) Quantities of surface water diverted and/or ground water withdrawn for water supply for each year of a recent five-year period. (Annual and monthly acre-feet and maximum and minimum monthly flows in ~~((cfs (surface) and gpm (ground water)))~~ cubic feet per second (cfs) for surface water and gallons per minute (gpm) for ground water.)

(7) Identify and assess the hydrological water flow system within the applicant's service area as it pertains to the quantities of water: (a) Diverted or withdrawn, (b) conveyed and distributed, (c) delivered and applied on farm, (d) which recharge the ground water and are returned to the agricultural water supply system, and (e) which comprise return flows for further irrigation downstream within the agricultural water supply system.

(8) Identify the quality of water supply and an assessment of the water quality impacts from use of the agricultural water supply system within the applicant's jurisdiction.

Present Facilities and Operations

(9) Identify and describe the present physical system utilized for the storage, diversion, pumping, conveyance, and distribution of the water supply.

(10) Assess and evaluate the existing water supply system including system efficiencies and energy use.

Water Needs and Adequacy of Water Supply

(11) Forecast future trends of land use.

(12) Estimate irrigation water requirements for the present and anticipated land use and cropping patterns.

~~(13)~~ Relate the water needs to present water supply available.

Evaluation of Opportunities for Improvements in Water Supply and Distribution System Efficiencies

(14) Identify improvements in water supply and distribution system efficiencies (structural and nonstructural).

(15) Document a system improvements and rehabilitation plan, prepare preliminary designs and cost estimates, and estimate time frame for implementation. Identify location of improvements on layout map.

(16) Quantify the reasonable net water savings that would result from the efficiency improvements.

(17) Identify and describe opportunities for improving irrigation water management.

(18) Quantify any net energy savings that would result from efficiency improvements.

(19) Evaluate the socioeconomic impacts from the efficiency improvements and rehabilitation plan and changes or modifications of the systems operations and management policies. Discuss and quantify the benefits that accrue from the implementation of the improvements and rehabilitation plan.

(20) Assess and evaluate the impacts and benefits of transferring the net water savings to other water uses and resources.

(21) Identify associated wetlands and assess the impacts on them from implementation of the physical system's improvements and rehabilitation plan.

(22) Evaluate the impacts on water quality standards from implementation of the physical system's improvements and rehabilitation plan.

(23) Evaluate other environmental impacts from the efficiency improvements and rehabilitation plan. Develop a plan regarding compliance with the State Environmental Policy Act (SEPA) and the National Environmental Policy Act (NEPA) if applicable.

Financial

(24) Develop a financial program that addresses the implementation of the improvements and rehabilitation plan. The financial program should include, among other elements, a time schedule for completing the comprehensive water conservation plan, a summary of the applicant's current indebtedness and repayment plans, present and future operation, maintenance and energy costs (with and without implementation of the proposed project), and a schedule of assessments to cover planned indebtedness to complete implementation of the comprehensive water conservation plan.

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WAC 173-170-050 Planning phase--Funding. (1) As available and awarded, financial assistance ((will be available)) for the planning phase will be provided in the form of:

(a) Grants in the amount of fifty percent of the total eligible phase costs; and

(b) Concurrent loans in the amount of forty percent of the total eligible phase costs.

(2) Loans shall be for a maximum five-year period, repayable at an annual percentage rate which equals the rate for one year federal treasury bills at the first auction following July 1 of the state fiscal year in which the loan agreement is entered into, discounted by four percent.

(3) Comprehensive water conservation plans must precede the implementation phase for projects approved after the effective date of these rules(~~(, with the following exceptions:~~

~~(a) Specific project work approved by the department prior to the effective date of these rules; or~~

~~(b) Project work that is currently in the implementation phase, when these rules become effective; or~~

~~(c) Specific project work that is approved by the department as part of a phased project begun prior to the effective date of these rules.~~

~~For these exceptions, work may proceed without an approved comprehensive water conservation plan, provided that the applicant undertakes and completes its plan covering such projects within two years from the effective date of these rules)).~~

(4) Financial assistance for the planning phase, regardless of the form it takes, may not exceed two hundred thousand dollars per applicant. ~~((This ceiling shall not be subject to the review contained in WAC 173-170-080(5).))~~

AMENDATORY SECTION (Amending WSR 90-20-109, filed 10/2/90, effective 11/2/90)

WAC 173-170-070 Criteria for approval of requests for financial assistance--Implementation phase. (1)((+a+)) The implementation phase project(s) must be included in a comprehensive water conservation plan approved by the department.

~~((b) For projects that received approval from the department prior to the effective date of these rules, work may proceed provided the applicant undertakes and completes a comprehensive water conservation plan within two years of the effective date of these rules.))~~

(2) The agricultural water supply facilities must be designed to accomplish the purpose of the planned project. Accepted engineering design principles, criteria, and concepts will be used in the design of the facilities and approved by the department. Cost estimates for the proposed project must be prepared in detail. Plans and specifications must be approved by the department prior to advertising for construction bids.

(3) The State Environmental Policy Act (SEPA) requirements for any proposed actions must be met. The SEPA rules, chapter 197-11 WAC, will be followed to determine the environmental impacts of the proposed project. A copy of the ~~((environmental assessment and the final impact statement, if appropriate,))~~ final SEPA document and any needed supporting environmental analysis must be submitted to the department. ~~((If no impact statement has been prepared, a copy of the declaration of nonsignificance in accordance with chapter 197-11 WAC must be submitted to the department.))~~

(4) Documentation showing all lands and land rights required for satisfactory construction, operation, and maintenance of the project have been or can be acquired.

(5) The project will not be in conflict with any applicable federal, state, and local laws, orders, regulations, rules, licenses, and permits.

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WAC 173-170-080 Implementation phase--Funding. (1) Implementation phase projects will be categorized by the department as Class A projects or Class B projects in accordance with the definitions for those terms under WAC 173-170-020 (5) and (6).

(2) ~~((For projects that received approval from the department prior to the effective date of these rules and where the applicant is working on the comprehensive water conservation plan, financial assistance will be available as follows:~~

~~(a) For Class A projects, grants in the amount of twenty-five percent of the total eligible project costs; and concurrent loans in the amount of sixty-five percent of the total eligible project costs.~~

~~(b) For Class B projects, grants in the amount of fifteen percent of the total eligible project costs; and concurrent loans in the amount of seventy-five percent of the total eligible project costs.~~

~~(3))~~ As funds are available and awarded, financial assistance for Class A projects subject to a completed comprehensive water conservation plan ((will be available)) shall be provided in the form of:

(a) Grants in the amount of thirty percent of the total eligible project costs; and

(b) Concurrent loans in the amount of sixty percent of the total eligible project costs.

~~((4))~~ (c) The department may issue an additional portion of the funding in grants for projects with significant public benefit.

(3) As funds are available and awarded, financial assistance for Class B projects subject to a completed comprehensive water conservation plan will be ((available)) provided in the form of:

(a) Grants in the amount of fifteen percent of the total eligible project costs; and

(b) Concurrent loans in the amount of seventy-five percent of the total eligible project costs.

~~((5))~~ (4) Financial assistance for implementation phase projects shall be limited to a total of ((one)) two million five hundred thousand dollars per applicant regardless of the form ((such financial assistance takes, with the following possibility of increase. This cap shall be subject to review on

~~July 1, 1994. In the event that demand on the Referendum 38 fund is significantly less than anticipated this cap may be adjusted upwards to provide more funding possibilities to applicants already at the upper)), except that loans once fully repaid shall not be measured against the limit.~~

~~((6))~~ (5) Loans awarded shall be available on the following repayment and interest schedule:

(a) Loans for up to a maximum five-year period, repayable with interest at an annual percentage rate which equals the rate for one year federal treasury bills at the first auction following ~~((July 1))~~ the beginning of the state fiscal year (July 1) in which the loan agreement is entered into, discounted by four percent.

(b) Loans for five years through a maximum ten-year period, repayable with interest at an annual percentage rate which equals the rate for one year federal treasury bills at the first auction following ~~((July 1))~~ the beginning of the state fiscal year (July 1) in which the loan agreement is entered into, discounted by two percent.

(c) Loans for ten years through a maximum fifteen-year period, repayable with interest at an annual percentage rate which equals the rate for one year federal treasury bills at the first auction following ~~((July 1))~~ the beginning of the state fiscal year (July 1) in which the loan agreement is entered into, discounted by one percent.

(d) Loans for fifteen years through a maximum twenty-five-year period, repayable with interest at an annual percentage rate which equals the rate for one year federal treasury bills at the first auction following ~~((July 1))~~ the beginning of the state fiscal year (July 1) in which the loan agreement is entered into.

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WAC 173-170-090 Emergency projects--Applications--Designation--Funding. (1) Applications for emergency projects may be accepted at any time throughout the year. The application shall indicate:

(a) The nature of the occurrence that caused the need for repairs;

(b) The location of needed repairs;

(c) A project description of the repairs; and

(d) A summary of how the repairs fit within the long-range improvements addressed in the comprehensive water conservation

plan.

If the comprehensive water conservation plan has not been completed, a summary of how the repairs fit within proposed long-range improvements.

~~(2) ((Upon receipt of the application the department will designate the emergency project as a Class A or Class B project.))~~ A decision on whether to fund the emergency project will be made within fifteen days of receipt of the application. The department may agree to the applicant incurring costs prior to an agreement being signed and shall so indicate by letter to the applicant.

(3) Financial assistance for emergency projects shall ~~((take the following form:~~

~~(a) For Class A projects, grants in the amount of thirty percent of the total eligible project costs; and concurrent loans in the amount of sixty percent of the total eligible project costs; or~~

~~(b) For Class B projects, grants in the amount of fifteen percent of the total eligible project costs; and concurrent loans in the amount of seventy-five))~~ be in the form of loans for up to ninety percent of the total eligible project costs.

AMENDATORY SECTION (Amending WSR 90-20-109, filed 10/2/90, effective 11/2/90)

WAC 173-170-100 ((Small parcels)) Yakima River Basin Water Enhancement Project--Funding. ~~(1) ((A small parcel element is that part of an implementation project that provides irrigation water for noncommercial use to small parcels, as defined in WAC 173-170-020(19)).~~

~~(2) Financial assistance for the small parcel element shall be available in the form of:~~

~~(a) Grants in the amount of fifteen percent of the small parcel element's total eligible costs; and~~

~~(b) Loans in the amount of fifty percent when unaccompanied by a grant or thirty-five percent in combination with a grant of the small parcel element's total eligible costs.~~

~~(3) Financial assistance, whether grant, loan, or a combination grant and loan, may not exceed one hundred thousand dollars for any one applicant.~~

~~(4) Total funds available statewide for small parcel elements is one million dollars. Any moneys unspent out of that fund on July 1, 1995, shall be transferred to the general implementation fund and shall no longer be available for small parcel elements.))~~ The Yakima River Basin Water Enhancement

Project (YRBWEP) may be provided state funding by agreement with the department, to the extent that moneys are available.

(2) Funds provided under this section for YRBWEP shall be exempt from WAC 173-170-080.